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REPORT
No. 2337

AMENDING TITLE 18, UNITED STATES CODE, ENTITLED "CRIMES AND CRIMINAL PROCEDURE," WITH RESPECT TO STATE JURISDICTION OVER OFFENSES COMMITTED BY OR AGAINST INDIANS IN THE INDIAN COUNTRY

JUNE 27, 1952.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRYSON, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6036]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6036) to amend title 18, United States Code, entitled "Crimes and Criminal Procedure," with respect to State jurisdiction over offenses committed by or against Indians in the Indian country, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

The amendment is as follows:

Page 2, between lines 12 and 13: In the line reading: "New York----------All Indian country within the State." insert after the word "country" the words "including Indian reservations".

STATEMENT

In recent years there has been enacted legislation conferring criminal jurisdiction on particular States (California, Iowa, Kansas, New York, and North Dakota) over offenses committed by or against Indians on some or all of the Indian reservations in those States. The Department of Interior, the agency charged with administering Indian affairs for the Federal Government, intends, from time to time as the States and the Indians become prepared for such action, to submit to Congress for its approval legislation conferring on additional States criminal jurisdiction over offenses committed by or against Indians on Indian reservations in those States. Before doing so, however, the Department wishes to bring together in one place the legislation on this subject which is now in effect and to put it into a form which will lend itself to extension to additional States or reservations.

It is, therefore, the purpose of the instant bill to bring together existing legislation on this subject and cast it in a form which will permit, by subsequent legislation, additional areas to be added to those already listed without necessitating the reenactment of the substantive provisions of this bill for each additional State or reservation.

The proposed legislation, in the interests of uniformity and clarity, has made changes in the test of existing legislation but in doing so it does not seek to change the substantive matter of those sections but merely to rephrase them. For instance, section 2 of this bill (subsec. (c) of proposed sec. 1161) expressly preserves Indian rights and immunities therein mentioned in all of the States cited in the bill even though the present laws relating to some of those States have no comparable provisions. In incorporating these provisions in the present bill, the committee is not seeking to create new law but is merely explicitly expressing what has long been the uniform Federal policy of protecting Indian privileges, rights, and immunities against encroachment. The Department of Interior explains those provisions as follows:

> The acts with respect to North Dakota and California contain a proviso preserving to the Indians any rights they may have under Federal law prohibiting the taxation and alienation of restricted property. The other three acts contain no comparable proviso. The proposed bill incorporates the substance of this proviso, and rephrases it so as to insure that all rights, privileges, and immunities affecting the ownership or taxation of restricted property accorded Indians by Federal law, treaty or agreement will be preserved. Such a clarification is consistent with the Federal policy of protecting Indian property against encroachments. It is also consistent with the intent of all five existing acts on State criminal jurisdiction, since the normal exercise of such jurisdiction does not involve the imposition of property taxes or changes in the rules of property law. Under the proposed bill this safeguard would be made applicable to each of the five States named, and would also apply to any areas subsequently added to the list.
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> The act with respect to New York contains a proviso preserving to the Indians any hunting and fishing rights they may have under Federal law and affirmatively relieving them of the obligation of obtaining State licenses for the exercise of those rights. This proviso has been incorporated in the proposed bill in a revised form which makes clear that the Indians will continue to enjoy whatever rights, privileges, or immunities they now have under Federal law, treaty, or agreement with respect to hunting, trapping, or fishing and the control, licensing, or regulation thereof. The language used is broad enough to cover both the right, if any, of individual Indians to hunting or fishing privileges, whether exclusive or nonexclusive, in particular areas, and their immunity, if any, from State regulation or licensing of these privileges. The language used is also broad enough to cover the right, if any, of particular Indian tribes to regulate or license hunting or fishing activities on Indian lands, either independently of State control or, as is now the case on certain New York reservations, in subordination to State conservation laws. This saving language would be made applicable to all States where criminal jurisdiction over Indians has been, or is hereafter granted, to the State.

It will also be noted that section 2 of this bill (subsec. (b) of proposed sec. 1161) provides for concurrent jurisdiction by the United States over offenses defined by the laws of the United States committed by or against Indians within areas listed in this bill. Similar provisions are included in existing laws relating to the States of Iowa, Kansas, and North Dakota. However, the laws relating to the States of New York and California do not specifically provide for the retention of concurrent jurisdiction in the Federal Government. The Department of Justice while taking no position with respect to the instant bill nevertheless has submitted for the committee's consideration the legal question of whether the United States, insofar as New York and Cali-

fornia are concerned, can reacquire jurisdiction over such offenses without having first to obtain the consent of those States. While no doubt this issue will only be authoritatively and properly decided by the courts, the committee nevertheless has the duty, at least in the first instance when it considers any proposed legislation, to study the legal problems as well as other issues involved. In this instance, the committee is of the considered opinion that the Congress has always retained jurisdiction over these crimes even though it has not expressly provided for such retention in the earlier legislation. The mere fact that the acts with respect to New York and California are silent on the subject of concurrent jurisdiction does not deprive the United States of that jurisdiction. In addition, our constitutional system does not provide for a territorial jurisdiction vested exclusively in a State in the sense that the Federal Government is to be precluded from exercising therein its Federal functions.

The issue herein is not one of exclusive jurisdiction versus concurrent jurisdiction. The question more properly is whether the existing Federal legislation regarding New York and California has the effect of repealing other Federal laws defining certain offenses committed within the Indian country, insofar as such offenses committed within the Indian country in those two States are concerned. Repeal of criminal laws by implication of course is not lightly presumed, and there is no evidence before the committee that Congress intended a pro tanto repeal of the laws in question. Certainly prior to the enactment of the existing legislation regarding New York and California those States were precluded from enforcing their criminal laws within the Indian country with respect to designated crimes or classes of persons, because Congress, under its constitutional power to regulate commerce with Indian tribes, had preempted the field. (Cf. 18 U. S. C., secs. 1152 to 1153 and predecessor sections). Whenever Congress therefore subsequently authorized the States to enforce State criminal laws there was no compelling reason for it to repeal the Federal laws and its complete silence on the subject should not a fortiori be interpreted as an implied repeal. It should be remembered that the earlier legislation gave force and effect to State criminal laws and extended their jurisdiction to Indian reservations within those States. That legislation had nothing to do with offenses defined by the laws of the United States, strictly Federal offenses which remain within the jurisdiction of the Federal courts. It is not uncommon under our system of jurisprudence for a single act to constitute an offense both under the laws of a State and against the laws of the Federal Government.

Even if it could be successfully argued that existing legislation regarding New York and California had the effect of repealing pro tanto the laws of the United States defining certain offenses committed within the Indian country, there is no constitutional obstacle preventing Congress, through Federal legislation, from restoring the effectiveness of those laws. The power of Congress to enact criminal laws regarding Indians stems directly from the Constitution and that power is not impaired by any implied repeal of a particular law.

Section 3 of the bill repeals the existing law on this subject and at the same time expressly preserves any rights or liabilities now existing under these statutes. In the case of the existing law with respect to California, since criminal and civil jurisdiction is dealt with in the

same act (63 Stat. 705, ch. 604) the repeal takes the form of deleting the reference to criminal jurisdiction and leaving unaffected the provisions of the act relating to civil jurisdiction.

AMENDMENT

The instant bill relates generally to offenses committed in areas within the "Indian country." In 1948 when title 18 of the United States Code was revised and became effective, the Congress enacted section 1151 thereof wherein it defined Indian country by consolidating the numerous conflicting and inconsistent provisions into a concise statement of the applicable law. (See reviser's note following sec. 1151 of title 18, U. S. Code Annotated.) Nevertheless the question has been raised as to whether the Indian reservations in the State of New York may be classified as Indian country. Back in 1890, a Federal circuit court, northern district, New York, held that certain Indian reservations in New York were not Indian country (*Benson* v. *United States*, 44 Fed. 178) and as recently as 1945, the State courts of the State of New York have so indicated. (See *People ex rel. Ray* v. *Martin*, 294 N. Y. 61, aff'g 268 App. Div. 218, aff'g 181 Misc. 925.) It should be noted, however, that all those decisions were prior to the recent codification and revision of title 18 of the United States Code in 1948 when the present section 1151 defining Indian country was enacted and also prior to the act of July 2, 1948, conferring jurisdiction on New York over offenses committed on reservations within the State. (For legislative history and purpose of act July 2, 1948, see 1948 U. S. Code Cong. Service p. 2284.)

By Federal constitutional provision (art. 1, sec. 8) Indian tribes have always been under the care and protection of the Government of the United States and there can be no doubt of the paramount power of Congress over Indians, their tribal affairs and their domains (*Worcester* v. *The State of Georgia*, 31 U. S. 515). It is clear, so far as is pertinent to this bill, that Congress has exercised its authority over the Indian reservations in New York when, by an act of July 2, 1948 (25 U. S. C., sec. 232), it conferred jurisdiction on that State over offenses committed by or against Indians on Indian reservations within the State and it is, of course, the intent of this legislation to continue that authorization. Since, then, the purpose of the present bill is merely to cast existing legislation regarding criminal jurisdiction over Indians into a form which will facilitate the extension of criminal jurisdiction to other States and, since the State of New York is the only one raising this question, the committee, in order to avoid further issue upon this matter, has decided to include the words "Indian reservations" in that section of the bill which lists New York as one of the States within its provisions.

Attached hereto and made a part of this report are communications from the Department of the Interior and the Department of Justice.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., November 20, 1951.

MY DEAR MR. SPEAKER: Enclosed is a draft of a proposed bill to amend title 18, United States Code, entitled "Crimes and Criminal Procedure," with respect to State jurisdiction over offenses committed by or against Indians in the Indian country.

I request that the proposed bill be referred to the appropriate committee for consideration, and I recommend that it be enacted.

Within the past few years there have been enacted five separate acts, each conferring jurisdiction on a different State over offenses committed by or against Indians on some one or all of the Indian reservations in that State. All the acts are similar in substance, but vary in language. They are as follows:

1. Act of June 8, 1940 (54 Stat. 249, ch. 276), with respect to offenses committed on Indian reservations in Kansas.
2. Act of May 31, 1946 (60 Stat. 229, ch. 279), with respect to offenses committed on the Devils Lake Indian Reservation, N. Dak.
3. Act of June 30, 1948 (62 Stat. 1161, ch. 759), with respect to offenses committed on the Sac and Fox Indian Reservation, Iowa.
4. Act of July 2, 1948 (62 Stat. 1224, ch. 809), with respect to offenses committed on Indian reservations in New York.
5. Act of October 5, 1949 (63 Stat. 705, ch. 604), with respect to offenses committed on the Agua Caliente Indian Reservation, Calif.

The act with respect to Kansas was revised in 1948 when title 18 of the United States Code was enacted into law, and now constitutes section 3243 of that title. The act with respect to New York is codified as section 232 in title 25 of the United States Code, which has not yet been revised and enacted into law. The acts with respect to North Dakota, Iowa, and California, which are limited to particular reservations, do not appear in any of the titles of the United States Code.

This Department, after consulting the Indian tribes and the States concerned, intends to submit to the present Congress proposed bills to confer on additional States jurisdiction over offenses committed by or against Indians on Indian reservations in those States. Before the submission of such proposals, the enclosed draft bill is recommended for enactment in order to bring together in one place the legislation on this subject that is now in effect, and to put it in a form that lends itself to extension to additional States or reservations as the circumstances warrant. In furtherance of this purpose, the draft bill continues State criminal jurisdiction over Indians within the areas covered by existing legislation, but is cast in a form that will permit additional areas to be added to the list by subsequent legislation without reenacting the substantive provisions of the bill for each additional State or reservation.

The proposed bill makes a few changes in the text of the existing legislation in order to clarify and unify the law, as explained in detail below.

The acts with respect to Kansas, Iowa, and North Dakota contain a proviso specifically retaining concurrent Federal jurisdiction over offenses defined by the laws of the United States. The acts with respect to New York and California are silent on this subject, but such silence probably does not deprive the United States of concurrent jurisdiction. The proposed bill includes the provision in question, and makes it of general application to all areas covered by the bill. This is a desirable precaution against the possibility of a breakdown in local law enforcement.

The acts with respect to North Dakota and California contain a proviso preserving to the Indians any rights they may have under Federal law prohibiting the taxation and alienation of restricted property. The other three acts contain no comparable proviso. The proposed bill incorporates the substance of this proviso, and rephrases it so as to insure that all rights, privileges, and immunities affecting the ownership or taxation of restricted property accorded Indians by Federal law, treaty, or agreement will be preserved. Such a clarification is consistent with the Federal policy of protecting Indian property against encroachments. It is also consistent with the intent of all five existing acts on State criminal jurisdiction, since the normal exercise of such jurisdiction does not involve the imposition of property taxes or changes in the rules of property law. Under the proposed bill this safeguard would be made applicable to each of the five States named, and would also apply to any areas subsequently added to the list.

The act with respect to New York contains a proviso preserving to the Indians any hunting and fishing rights they may have under Federal law and affirmatively relieving them of the obligation of obtaining State licenses for the exercise of those rights. This proviso has been incorporated in the proposed bill in a revised form which makes clear that the Indians will continue to enjoy whatever rights, privileges, or immunities they now have under Federal law, treaty, or agreement with respect to hunting, trapping, or fishing and the control, licensing, or regulation thereof. The language used is broad enough to cover both the right, if any, of individual Indians to hunting or fishing privileges, whether exclusive or nonexclusive, in particular areas, and their immunity, if any, from State regulation or licensing of these privileges. The language used is also broad enough to cover the right, if any, of particular Indian tribes to regulate or license hunting or fishing activities on Indian lands, either independently of State control or, as is now the

case on certain New York reservations, in subordination to State conservation laws. This saving language would be made applicable to all States where criminal jurisdiction over Indians has been, or is hereafter granted, to the State.

The proposed bill would codify the existing legislation conferring criminal jurisdiction on particular States as a part of chapter 53 of title 18, United States Code. That is the chapter dealing with criminal offenses committed by or against Indians. The present statute with respect to Kansas is now codified in chapter 211 of title 18, which deals with the jurisdiction and venue of the Federal courts. The subject matter of the legislation relates to the jurisdiction of State courts, rather than Federal courts, and I believe the preferable place for codification is chapter 53. When the legislation is so codified, the separate acts should be repealed. Section 3 of the proposed bill contains such a repeal provision. In the case of the act with respect to California, the repeal takes the form of deleting the reference to criminal jurisdiction and leaving unaffected the provisions of the act dealing with civil jurisdiction. Only in the case of California are criminal and civil jurisdiction dealt with in the same act.

It is my belief that the enactment of the enclosed bill would serve the highly desirable purpose of codifying the present legislation regarding State criminal jurisdiction over Indians, in a form that will facilitate the extension of criminal jurisdiction over Indians to other States, as the States and the Indians become prepared for such action from time to time.

The Bureau of the Budget has advised that there is no objection to the presentation of this proposed legislation to the Congress.

Sincerely yours,

MASTIN G. WHITE,
Acting Assistant Secretary of the Interior.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

MARCH 19, 1952.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on the bill (H. R. 6036) to amend title 18, United States Code, entitled "Crimes and Criminal Procedure," with respect to State jurisdiction over offenses committed by or against Indians in the Indian country.

The bill would codify existing laws conferring criminal jurisdiction on particular States (California, Iowa, Kansas, New York, and North Dakota) over offenses committed by or against Indians on specified areas in those States.

It is noted that section 2 of the bill (subsec. (b) of proposed sec. 1161) would provide for concurrent jurisdiction by the United States over offenses defined by the laws of the United States committed by or against Indians within the areas listed in the section. Somewhat similar provisions are included in existing laws relating to the States of Iowa (Sac and Fox Indian Reservation), Kansas, and North Dakota (Devils Lake Indian Reservation). However, the laws relating to the States of New York and California (Agua Caliente Indian Reservation) do not provide specifically for the retention of jurisdiction in the United States. A question therefore exists as to whether the omission of this provision divested the United States of jurisdiction in those States over the offenses in question. If so, the States of New York and California would have exclusive jurisdiction over such offenses. Under such circumstances, there is a question as to whether, insofar as New York and California are concerned, the consent of those States would be necessary to effectively revest jurisdiction in the United States.

The issues raised by the foregoing questions have not been litigated but it is anticipated they will be, and, in the event of the enactment of this bill, it is almost certain that such issues will be presented for authoritative determination by the courts. This Department expresses no opinion as to whether or not the situation as outlined above should affect the favorable consideration of the bill, but believes it to be of sufficient importance to call to the attention of your committee.

Whether the bill should be enacted presents a question of policy on which the Department of Justice prefers to make no recommendation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.

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